

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.169 of 2001 (O&M)
Date of Decision: 12.02.2015

Hari Ram Bedi (deceased)

...Petitioner
Versus

Ram Lubhaya

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Sidharth Sharma, Advocate
for the petitioner.

Ms. Neha Jain, Advocate
for the respondent.

R.P. Nagrath, J. (Oral)

This petition is filed in terms of Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short to be referred as “the Act”) seeking to challenge the orders passed by the Rent Controller and affirmed by the Appellate Authority whereby eviction petition based on bonafide personal requirement of the landlord was dismissed.

The eviction petition was filed on 25.03.1998 and it was stated that petitioner retired from the Department of District Education Officer (Primary) where he was working as a Junior

Assistant. The ground of eviction was that the landlord wanted the demised shop for starting his own business of selling stationary goods. The respondent opposed the application.

Both the Courts below have not accepted the ground of bonafide personal need and occupation of the landlord.

I have heard learned counsel for the parties, perused the orders passed by the Courts below and also the records.

Learned counsel for the petitioner vehemently contended that the Courts below were swayed by the fact that the eviction petition was filed after two years of retirement of the landlord but the delay, if any, was satisfactorily explained as the landlord was a patient of asthma and getting Ayurvedic treatment. Learned counsel for the petitioner submits that there was an admission by the respondent in his cross-examination that the landlord remained ill after his retirement for some time.

The learned Appellate Authority observed as under:-

“The applicant retired in the year 1996, whereas the present application has been filed on 25.3.1998 after the gap of two years. Although it has been stated that the applicant could not start his business earlier as he was sick but no evidence regarding sickness or any illness which prevented the applicant to start business, has been proved on record. As it is sufficiently established that there is another shop adjoining to the shop in dispute which is also owned by the applicant no steps have been taken by the

applicant to seek eviction of the tenant from the other shop and there is no explanation why this shop has been chosen by the applicant. The need of the applicant does not appear to be bonafide. Had it been bonafide the applicant would have taken all steps to vacate the tenants from both the shops. No steps had been taken by the applicant for initiation of the business and therefore, it appears to be a fanciful desire on the part of the applicant to start business of stationary goods, and this cannot be accepted to hold that there was genuine need on the part of the landlord for which he requires the demised premises for his own use and occupation. It is not the applicant-landlord at any time and every time can seek eviction. It is not his whimsical/ fanciful desire that there has to be element of need before it can be said that requirement is bonafide but the same is missing in the present case.”

I am of the view that the above observation of learned Appellate Authority cannot be approved, but the landlord for whose personal need the shop was required having died the ground of eviction would not subsist.

The eviction petition filed in March, 1998 was decided by the Rent Controller in the year 1999. The appeal against the order of Rent Controller was dismissed on 18.08.2000. Hari Ram Bedi, the landlord died on 03.05.2006, during pendency of the instant petition and his legal representatives were brought on record.

Learned counsel for the petitioner vehemently contended that the state of facts existing on the date of filing of eviction petition should be relevant for determining merits of the case as a long period of pendency of the lis cannot mar the rights of the parties. Hon'ble Supreme Court in ***Seshambal (dead) through LRs Vs. M/s Chelur Corporation Chelur Building and others, 2010 (1) Rent Control Reporter 230***, by referring to the case law on the subject held that on the death of the landlord in the original eviction petition, their right to seek eviction on the ground of personal requirement for the demised premises becomes extinct and no order could be passed on the basis of such requirement at this point of time. It was further held as under:-

“10.While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted. That proposition of law is, in our view, fairly settled by the

*decisions of this Court in **Pasupuleti Venkateswarlu**¹ case (supra). Krishna Iyer J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words:*

“.....If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in

many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.....”

13. To the same effect is the decision of this Court in **Baba Kashinath Bhinge’s**² case (supra) where relying upon the decision in **Hasmat Rai’s**³ case (supra) this Court held that in a case of bona fide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal for revision no decree will be justified. For that purpose the Court should take all the subsequent events into consideration and mould the relief accordingly. Following passage provides a complete answer to the question raised before us:

*“Equally it is settled by this Court in series of judgments and a reference in this behalf would be sufficient by citing **Hasmat Rai v. Raghu Nath Prasad** that in a case of bona fide requirement, it is always necessary, till the decree of eviction is passed that the landlord should satisfy that the*

² Baba Kashinath Binge vs. Samast Lingayat Gaveli, 1994 Supp.(3) SCC 698

³ **Hasmat Rai vs. Raghunath Parsad**, 1981(3) SCC 103.
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authenticity of this document
Chandigarh

need is bona fide and the need subsists. In a case where the need is available at the time of filing the petition, but at the time of granting decree it may not continue to subsist, in that event, the decree for eviction could not be made. Similarly pending appeal or revision or writ petition, the need may become more acute. The court should take into account all the subsequent events to mould the relief. The High Court may not be justified in omitting to consider this aspect of the matter but that does not render the judgment illegal for the subsequent discussion we are going to make.”
(emphasis supplied).

16. The decision of this Court in **Kedar Nath Agrawal (dead) and Anr. v. Dhanraji Devi (dead) by LRs. and Anr. 2004(2) RCR (Rent) 498: (2004 (8) SCC 76)** has reiterated the legal position after a detailed review of the case law on the subject. That was also a case where two applicants seeking eviction of the tenant had passed away during the pendency of the eviction petition and the question was whether the three married daughters left behind by the couple could continue with the same. This Court observed:

“31. In view of the settled legal position as also the decisions in **Pasupuleti Venkateswarlu** and

Hasmat Rai, in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material.....”,

In this case, the landlord pleaded his own requirement and not that he wanted to start business in association with other family members. As stated by the landlord, his one son is working in a factory and the other is in PWD Department. In **Seshambal 's case** (supra), Hon'ble Supreme Court held that requirement pleaded in the eviction petition by the landlord was his own and not of the members of the family whether dependent or otherwise. It was further observed that if indeed the deceased landlord has any dependent member of the family, it could be assumed that the requirement was also pleaded for the dependent member of the family. That unfortunately was neither the case set up nor the position on facts.

There is no merit in the instant petition.

Dismissed.

(R.P. Nagrath)
Judge

12.02.2015
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